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LORDS Protest

ON A

MOTION

*England — Parliament — House of
Lords — Proceedings — II.*

The HOUSE to be put into a Committee upon the Bill, intituled, *An Act to make it High Treason to hold Correspondence with the Sons of the Pretender to His Majesty's Crown.*

Act in Def.
Die Veneris 27mo Aprilis, 1744.



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THE
LORDS OF THE
MOTION
FOR

The House to be put into a Com-
mittee upon the Bill intituled, An
Act to amend the High Treason to hold
Parliament with the hour of the
Prayer in the Morning's Commemoration.



THE LORDS Protest.

Die Veneris 27mo Aprilis, 1744.

THE Order being read for the House to be put into a Committee upon the Bill, intitled, *An Act to make it High Treason to hold Correspondence with the Sons of the Pretender to His Majesty's Crown.*

Order'd, That it be an Instruction to the said Committee, that they do receive a Clause for attainting any of the Pretender's Sons of High Treason, in case they shall land, or attempt to land in *Great Britain*, or any of the Dominions belonging to the Crown of *Great Britain*, or to be found on board any Ship or Vessel with Intent to land there.

Then the House was mov'd, That the 10th Section of an Act, made in the 7th Year of the Reign of Her late Majesty Queen *Ann*, intitled, *An Act for improving the Union of the two Kingdoms*, relating to *Forfeitures for High Treason*, might be read.

The same was read accordingly.

And

And it being also mov'd, That it be an Instruction to the said Committe, that they do receive a Clause or Clauses to suspend and postpone the Operation and Effect of the said 10th Section of the said Act till after the Death of the Sons of the Pretender.

The same was objected to, and a long Debate thereupon.

The Question was put, whether such an Instruction shall be given to the Committee ?

It was resolved in the affirmative.

Dissentient.

1. Because this Addition to the Bill enacts the Continuation of a Punishment, which tho' it may have prevailed at Times, in this and other Countries, we conceive it to be directly contrary to the first Principles of natural Justice, it being an uncontested Maxim, that the Innocent ought not to suffer for the sake of the Guilty, whereby the Nature of the Thing it is possible to prevent it.

2. Because involving the Innocent in the Punishment of the Guilty, is wholly inconsistent with that Spirit of Justice and Lenity that distinguishes our Law, and which says it is better, *That ten guilty Persons should escape, than that one innocent one should suffer.*

3. Because we conceive, That the postponing the Operation of that Clause, in Act 7. of Queen Ann,

Ann, till the Deaths of the Pretender's two Sons, is contrary to the plain Intention of that very Act, which appears throughout to have been an Act of Lenity and Mitigation, and to have confined to the Life of the Pretender himself, or three Years after the Succession of the present Royal Family should take Place : The Duration of those cruel Penalties, of Forfeiture of the Estates, and Corruption of the Blood of innocent Persons, as the utmost Term it was proper or just to allow them ; and we apprehend, that the Pretender's marrying and having Children, was at that Time too probable and obvious an Event, not to have suggested this Provision had it been thought either just or necessary.

4. Because we are far from being convinced, that the Terror of these Penalties will so often prevent Guilt, as the Execution of them will oppress Innocence ; and we do not conceive, that those whom neither the innate Principle of Self-preservation, nor the Horror inseparable from Guilt can restrain, will be check'd by the tender Sentiments of parental Affection.

5. Because we conceive, That no present Danger whatever can be urg'd as an Argument for this Clause, whose Operation does not commence till after the Death of the Pretender, who is now but fifty-six Years old ; and we can see no good Reason for anticipating a future and remote Danger (supposing that such a Danger could ever exist) in order to enact at present the longer Continuation of so dreadful a Penal Law.

6. Because we conceive, That this Continuation is, in effect, perpetuating this severe Law, since whatever Reasons can be urg'd for it during the Lives of the Pretender's two Sons will hold equally strong for continuing it as long as he or they shall have any Posterity subsisting.

7. Because we conceive, That as this Clause can have no immediate Operation, the enacting it at present may seem rather to be an Insinuation of present Disaffection, than any Security against it; which Insinuation we apprehend would be highly unjust and unbecoming, after the unanimous Zeal and Loyalty which the whole Nation has so lately given Proofs of for His Majesty's Person and Government, and with which His Majesty has so lately from the Throne declared himself satisfied, these Reasons have induced us to transmit to Posterity our Dissent to a Clause by which they may be so severely affected: We reflect with Concern upon the heavy Burthen of Debts and Taxes with which we fear we shall leave them loaded; and we desire that they may know, that we endeavour'd at least to secure their Innocence from the Rigour of those Laws to which it may hereafter be exposed and sacrificed.

The Clause refer'd to.

Proviso. That after the Decease of the Pretender, and at the End of three Years after the Succession of the Crown by the Demise of the Queen shall take Effect, no Attainder for Treason shall disinherite any Heir, nor prejudice the Right of any Person other than the Right of the Offender during his natural Life.

Abridg. of the Statutes.

Denbigh,
Oxford and Mortimer,
Rockingham,
Macclesfield,
Foley,
Westmoreland,
Beaufort,
Ward,
Harvey,
Litchfield,
Warrington,
Chesterfield,
Bridgewater,
Ailesbury,
Talbot,
Coventry,
Bedford,
Tbanet, } for all the Reasons but the 4th.

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For all the Records but the first